

MASS. EL1.2: ST 24

UMASS/AMHERST



312066016678702

The Commonwealth of Massachusetts
Executive Office of Elder Affairs
One Ashburton Place, Boston, MA 02108

WILLIAM F. WELD
GOVERNOR

ARGEO PAUL CELLUCCI
LIEUTENANT GOVERNOR

FRANKLIN P. OLLIVIERRE
SECRETARY

Information Memorandum

EOEA IM-97-05

OCT 17 1997

DOCUMENTS COLLECTION
FRANKLIN P. OLLIVIERRE
DIRECTOR OF ELDER AFFAIRS
1997

To: Area Agencies on Aging
Home Care Corporations
Title III Legal Assistance Providers

From: Franklin P. Ollivierre *Franklin P. Ollivierre*

Date: March 12, 1997

Subject: Proposed Standards for Title III Legal Assistance Programs

Enclosed please find proposed model standards for legal assistance programs funded under Title III of the Older Americans Act. These standards were developed by members of a subcommittee of EOEA's Title VII Task Force.

As you may know, our office is coordinating a Task Force under Title VII of the Older Americans Act (OAA) the goals of which are to marshall efforts to protect and enhance the rights and benefits of the state's most vulnerable people. Two of the major goals of this Task Force were as follows:

1. Improve coordination and communication between the four advocacy programs mentioned in Title VII, the Ombudsman Program, the Elder Protective Services Program, the Title III Legal Assistance Programs and the Public Benefits Outreach Counseling Programs (e.g. Serving Health Insurance Needs of Elders, SHINE); and
2. Develop statewide standards for the delivery of Title III Legal Assistance to older persons.

Last October, the Task Force members coordinated three successful Elder Rights Coordination Conferences in Holyoke, Easton and Lawrence which were well attended. Members of the Task Force will be assessing the extent to which enhanced coordination and communication has taken place during the next few months.

EOEA IM-97-05
March 12, 1997
page -2-

We would appreciate if you would review these draft model standards and forward your comments to the EOEa Title VII Task Force, c/o/Joel M. Semuels, Assistant General Counsel at EOEa.

If you have any questions, please call Joel Semuels at (617)727-7750 x271.

wp51/T7Ls29

FINAL DRAFT (11-18-96)

**STANDARDS FOR THE PROVISION OF LEGAL ASSISTANCE
TO ELDERS IN MASSACHUSETTS**

OUTLINE OF STANDARDS

Introduction

- I. Legal Authority
- II. Program Purpose
- III. Elder Rights Plan
- IV. Standards for focussing scarce resources-Target Populations
- V. Standards for establishing priority issues or areas
- VI. Techniques for reaching and serving targeted populations and for addressing priority issues or areas
- VII. Roles and Responsibilities of Legal Assistance Providers
 - A. Staffing requirements
 - B. General Provider requirements
 - C. Coordination requirements
 - D. Ethical standards for LAP's
- VIII. Roles and Responsibilities for Area Agencies on Aging
 - A. General AAA requirements
 - B. Special and Individual requirements
 - C. Coordination, Training and Support
- IX. Roles and Responsibilities of the Executive Office of Elder Affairs
 - A. General Requirements
 - B. State Support and Training responsibilities
 - C. Additional responsibilities

Introduction

On September 30, 1992, the reauthorized Older Americans Act (OAA) became law, establishing some important changes in the ways that Federal funds granted under that law are to be used for serving vulnerable elders in social or economic need. Here in Massachusetts, among the many important services furnished elders under the Older Americans Act is the provision of legal assistance under Title IIIB of the OAA. Soon after the law went into effect, Franklin P. Ollivierre, the Secretary of the Executive Office of Elder Affairs, indicated his intention to establish a Task Force of interested elders, advocates and service providers in order to assist in developing and implementing responses to additional requirements under a new Title- Title VII -of the OAA. Specifically, the Task Force was asked to develop (1) an Elder Rights Plan and (2) standards for the provision of legal assistance under Title IIIB of the OAA.

Notwithstanding the fact that the Administration on Aging (AOA) had yet to issue regulations or guidelines, Secretary Ollivierre requested the technical assistance of the Center for Social Gerontology in Ann Arbor, Michigan, who had received funding from the AOA to provide such services to the States, and appointed to the Task Force a diverse group of persons who shared one common characteristic: a commitment to serving elders. The Task Force met several times, established working committees, benefitted from the technical assistance furnished by the Center for Social Gerontology, and developed these standards to obtain optimal results for elders from limited OAA funding in this important area: legal assistance for elders.

I. Legal Authority

Title III of the Older Americans Act (OAA) of 1965, as amended as recently as September, 1992, requires that all Area Agencies on Aging provide legal assistance to elders residing in their planning and service area. Title VII of the OAA, added in 1992, specifically addresses legal assistance in chapter four and focuses on the provision of legal services as a part of a larger advocacy effort.¹

¹ The Task Force, in addition to developing these standards, worked on the development of an Elder Rights Plan. The Coordination Committee of the Task Force concerned itself, as the title implies, with issues involving how better to coordinate the functions and activities of the four advocacy efforts funded by the

Section 307 (a) requires the Commonwealth, in order to be eligible for its allotment of funds under the OAA, to submit a State Plan, which complies with all of the following requirements:

- (3)(A) EOEa shall evaluate the need for supportive services (including legal services).
- (8) EOEa shall conduct periodic evaluations of, and public hearings on, activities and projects carried out under the Plan, including an evaluation of the State agency's effectiveness in reaching older individuals with the greatest economic or social needs, with particular attention to low income minority individuals.
- (15) With respect to legal assistance, the Plan shall:
 - (A) contain assurances that Area Agencies on Aging will:
 - i. enter into contracts with providers of legal assistance which can demonstrate the experience and capacity to deliver legal assistance;
 - ii. include in any such contract provisions to ensure any such contracted recipient of funds will be subject to specific restrictions and regulations promulgated under the Legal Services Corporation Act in cases where the legal assistance provider is an LSC grantee (See the AOA Information Memorandum # AoA-IM-96-08 dated August 22, 1996;
 - iii. attempt to involve the private bar in legal assistance activities authorized under the Subchapter, including groups within the private bar furnishing services to older individuals on a pro bono or reduced fee basis;
 - (B) contain assurances that no legal assistance will be furnished unless the grantee administers a program designed to provide legal assistance to older individual with social and economic need; a grantee who is not an LSC grantee must agree to coordinate with the local LSC grantee;

AOA in the Commonwealth: legal assistance, nursing home ombudsman, protective services, and health benefits counselling (SHINE-Serving Health Information Needs of Elders).

- (C) provide that the EOEAA will coordinate the furnishing of legal assistance to older individuals within the Commonwealth, will provide advice and technical assistance, and will support the furnishing of training and technical assistance for such legal assistance;
- (18) Personnel, including a legal assistance developer shall be appointed by the EOEAA to provide State leadership in developing legal assistance programs throughout the Commonwealth;
- (22) A minimum percentage of funds received by the AAA that will be expended for legal assistance shall be contained in the Plan, unless a waiver is granted under § 306 (b) (1), to provide each of the categories of services specified in § 306 (a) (2).

Regulations related to LSC grantees are found at 42 CFR 1321.71.

Section 306 (d) of the OAA provides that an area agency on aging may not require any provider of legal assistance under this subchapter to reveal any information which is not protected by the attorney-client privilege.

Section 321 (a) (6) provides that the Commissioner shall make grants to states under approved plans for any of the following supportive services . . . (B) representation (i) of individuals who are wards (or allegedly incapacitated); and (ii) in guardianship proceedings of older individuals who seek to become guardians if other adequate representation is unavailable; (C) provision to older individuals who provide uncompensated care to their adult children with disabilities, of counselling to assist such older individuals with permanency planning for children.

Section 731 [42 U.S.C. § 3058i] provides guidance for the State Elder Rights Plan and the Legal Assistance Developer.

II. Program Purpose

The broad purposes of legal assistance services to older individuals in the greatest social or economic need [See 42 USC 3027 (A)] are:

- to provide quality counsel and representation to elders in their accessing services rights benefits and entitlements;

- to preserve and protect the autonomy and independence of persons age 60 or older

with priority toward service to vulnerable ² elders;

■ to eliminate barriers that interfere with access to legal assistance for elders who are isolated and underserved, including elders of color and non-English speaking elders.

III. Elder Rights Plan

Legal assistance funded under the OAA should be provided in accordance with the State and area plans that address elder rights.

IV. Standards for Focusing Scarce Resources: Target Populations

The need of elderly and low income persons for legal assistance has always far outstripped the resources available. In 1986, the Massachusetts Legal Assistance Corporation released a study which demonstrated that all current civil legal services providers were able to meet only some 17 % of the need. A 1994 similar study found that little had changed. In that context, since the resources available from OAA are likely to remain inadequate to meet all elders' need, legal assistance services must be targeted to particularly needy populations of elders. The OAA designates such particularly needy persons as those in the greatest social or economic need, low income elders of color, non-English speaking elders, and rural or isolated elders.

Economic need is the need resulting from living on income at or below the poverty level. Social need is the need caused by non-economic factors, e.g. physical and mental disabilities, institutionalization, language barriers, cultural, social or geographical isolation (including racial or ethnic status) which restricts an individual's ability to perform normal daily tasks or which threatens such individual's capacity to live independently.

The AAA's and legal assistance providers shall, in consultation with the EOE, jointly develop plans to target legal assistance services to the particularly needy persons described above, and shall jointly identify sub-groups of elders who are most vulnerable and in need of legal assistance. In developing plans for targeting services to vulnerable elders, consideration should be given to strategies by which the legal assistance providers can assist such groups as a whole. The desired outcome of legal assistance targeting should be considered in developing such plans.

² Vulnerable elders are defined in Section IV.

The following groups should be considered for priority for legal services assistance:

- ☐ older persons in long term care, including community based long term care
- ☐ older persons in need of protective services ³
- ☐ older persons who have lost or are facing loss of housing/ shelter
- ☐ older persons in need of public (income and health) benefits, services and entitlements
- ☐ older persons with problems of access to health care services or health care cost coverage

Consideration should be given on the local level to the existence and availability of other resources to meet the legal needs of targeted populations. The preceding list is a list of core priorities. Area agencies on aging and legal assistance providers shall amend or add additional priorities that reflect the distinct needs of their planning and services area.

V. Standards for Establishing Priority Issues or Areas

In addition to identifying targeted population groups and subgroups, the AAA's and legal assistance providers shall assure that legal assistance is available from within the following broad areas underlined below, as specified in the OAA 1992 reauthorization, throughout each planning and service area, subject to resource availability:

- ☐ INCOME MAINTENANCE, which may include:

Social Security (Title II)
SSI (Title XVI)
Food Stamps
Veterans Benefits
Unemployment compensation
Pensions
Railroad Retirement
Durable Powers of Attorney

- ☐ HEALTH AND LONG TERM CARE, which may include:

³ Such representation should ordinarily be limited to guardianship defense work, not representation of petitioners in competency proceedings except in unusual cases.

Medicaid/Medicaid Discrimination
Medicare
Nursing Home/home health issues
(quality of care, residents' rights)
Qualified Medicare Beneficiaries
(QMB) and Specified Low Income
Medicare Beneficiaries (SLIMBI)
issues
COBRA (e.g. health insurance) issues
Health Care Proxies
Health insurance issues

☐ HOUSING, which may include:

Landlord/Tenant
Home Mortgage Foreclosures
Home Repair Fraud
Utility Shut-off/Energy Issues
Threats to Home Ownership
Home Equity Conversion

☐ ABUSE, NEGLECT AND EXPLOITATION, which may include:

Elder Abuse
Financial Exploitation
Representative Payee

☐ REPRESENTATION OF WARD IN GUARDAINSHIP, which may include:

Defense or Removal of guardianship
Other guardianship/autonomy issues
Brophy issues⁴

☐ NURITION, which may include:

Access to services
Food Stamps

☐ AGE DISCRIMINATION, which may include:

⁴ Brophy cases are those involving a patient in a persistent vegetative state, whose life support systems and their continuation or removal are the central issues in a guardianship or other proceeding.

⁵ The Executive Office of Elder Affairs has maintained an Age Discrimination Program, which has recruited a panel of lawyers with appropriate expertise, since 19 , and Legal Assistance Providers are encouraged to coordinate any such activities with that program.

Housing Employment

The legal assistance provider should consider a prospective client's individual circumstances, the merits of each claim, and the likelihood of success, and may handle cases outside the scope of the foregoing list where appropriate in keeping with the program's purposes, as stated in Section V above.

VII. MECHANISMS FOR REACHING TARGETED GROUPS AND ADDRESSING PRIORITY ISSUES

Targeting is a commitment to serving those elders most in need. Priority setting follows identification of the types of cases/problems the legal assistance provider will and will not handle.

Outreach is initial to implementing the targeting and priority setting goals. Outreach in its broadest sense involves a variety of strategies. "First-come-first-served" is the result of unfocused outreach.

Almost by definition, the most vulnerable elders are the most difficult to reach and serve. Only focused outreach will achieve the goal of reaching the most vulnerable elders.

No program, no matter how well-suited to a community, will be successful if people do not know of its existence, if it is not easily accessible, and if people do not recognize the legal nature of their problems. Therefore, the system for the delivery of legal assistance must include each of the following:

A. Accessibility

Legal assistance services, as defined in these Standards, are to be available and accessible to the target population groups identified by the Area Agency on Aging and the legal assistance provider, as specified in the Title III B grant application of the provider. These services are to be available and accessible to the target population groups throughout the specific planning and service area. It is recommended that legal assistance providers permit AAAs or Councils on Aging to "screen" requests for legal assistance and refer only appropriate cases to the LAP.

B. Outreach

Each legal assistance provider shall include specific techniques in its grant application which will help to make potential clients aware of their

services. These techniques will be tailored to the groups which have been targeted.

C. Community Legal Education

Informing elders of their legal rights in community education forums, such as in forums, speeches, presentations, radio or television shows, is a service which is essential for legal assistance programs to provide under a Title III B legal grant. Community legal education is specifically discussed in Standard 5.7 of "Standards for Providers of Civil Legal Services to the Poor" as issued by the American Bar Association and which are available from the Legal Services Developer. (Appendix A)

Outreach goals shall be reflected in the Request for Proposal process and the Area Plan Appendix B (Section on Provision of Legal Assistance).

VII. PROVIDER ROLES AND RESPONSIBILITIES

In keeping with the broad purposes outlined in Section III., the goal of these standards is to assure that the EOEA and the respective AAAs and LAPs are working together to assure the delivery of high quality services designed to address the unmet legal needs of vulnerable older persons throughout the Commonwealth of Massachusetts.

To that end, the LAP shall use the full triad of legal advocacy tools which promote the zealous representation of clients required by Canon 7 of the Code of Professional Responsibility of the Commonwealth of Massachusetts. These tools include litigation, administrative and legislative advocacy, within the limits of applicable Federal and State law and Regulations.

While other legal assistance activities, such as community legal education and strategies planning are encouraged under these standards, the primary focus of Title IIIB Legal Assistance is the direct representation of clients in legal matters.

A. Staffing Requirements

1. Each program must provide access at no cost to attorneys or paralegals with the capacity to provide advice and representation in the areas outlined in Section VII.

2. All attorneys must be licensed to practice law in the Commonwealth of Massachusetts

(unless supervised as provided in #5 of this section) and must carry malpractice insurance in an amount to be established in consultation with the Area Agency and the Legal Services Developer.

3. Program staff (including attorneys and paralegals) must have experience and training or propose a plan for obtaining training in the priority areas of law set forth in Section VI.
4. Program staff (Title IIIB attorneys and paralegals) should be encouraged to participate in the Elderly Legal Coalition, and any other professional organizations whose focus is service to older persons, e.g., Elder Law Committee, MBA; Mass. Chapter, NAELA and to attend the annual Conference on Law and Aging. LAPs are likewise encouraged to reimburse attorneys and paralegals for any membership fees and costs entailed by such participation.

B. General Provider Requirements

Each Legal assistance provider shall:

1. work closely with the Area Agency on Aging on the development of the planning and service area's annual AAA Elder Rights plan and shall participate in planning of advocacy efforts dealing with systemic problems affecting older persons;
2. adhere to the standards set forth in this document and any amendments thereto;
3. be guided by the Standards for Providers of Civil Legal Services to the Poor, as issued by the American Bar Association in 1986 and which shall be used as a reference for these Standards;
4. work with the Area Agency on Aging to develop a method for surveying client satisfaction and assure that the views of older persons are solicited and considered as to the operation of the program. Such method shall respect the client's right to confidentiality;

5. assist the State Office on Aging and the Area Agency on Aging in developing and amending as necessary a model evaluation format. (Appendix B)
6. at a minimum, provide effective, high quality administrative and judicial representation for eligible individuals in the mandated priority issue areas set forth in Section VI of these standards, except where the provider can demonstrate to the satisfaction of the Area Agency on Aging with input from the State Legal Services Developer that another provider is delivering the service in accordance with these Standards;
7. use Title IIIB funds or other funds as contracted for from the Area Agency on Aging to maintain or increase, to the extent practicable, the level of legal assistance furnished to eligible individuals, and shall not use Title IIIB funds to supplant funds from other federal or non-federal sources;
8. as required in the Older Americans Act and regulations, and in accordance with Section V, not condition the provision of Title IIIB-funded legal assistance to any person 60 years of age or older on their level of income or resources. The provider may only question the client about financial circumstances as a part of the process of providing legal advice, counsel and representation, and for the purpose of identifying additional resources to which the client may be entitled, and to assist in targeting clients with greatest social and economic need;
9. give clients a voluntary opportunity to contribute to the cost of the services they receive and ensure privacy with respect to the client. Clients are to be informed of the opportunity to contribute only after services have been completed; and the method of announcing the opportunity to contribute shall not discourage the utilization of the service by the contributor or other potentially eligible individuals;
10. not subcontract any interest or obligation arising under a Title IIIB contract

without written agreement of the Area Agency on Aging;

11. have ready access to the following for all appropriate staff: relevant USCA and CFRs, relevant State laws and regulations and rules; manuals for relevant government programs, relevant support center manuals, newsletters, information and referral manuals, and a law library;
12. demonstrate, through the Area Plan process, the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language;
13. provide complete, accurate programmatic and fiscal reports to the Area Agency on Aging and the Office of Aging in a timely manner and provide additional information as may be requested by the Area Agency on Aging and the State Legal Services Developer, while maintaining client confidentiality. Such reports should include periodic statistical and narrative information. (Appendix C)

C. Coordination with the Long-Term Care Ombudsman Program

1. Providers of Legal Assistance shall coordinate with Area Providers of Long-term Care Ombudsman Services by developing a memorandum of understanding which includes, but is not limited to, conflict of interest, case acceptance procedures, and referral and confidentiality procedures; (model at Appendix D-1). similarly, providers shall coordinate with Area Providers of Protective Services and the SHINE program (Model Memoranda of understanding at D-2 and D-3).
2. Providers of Legal Assistance may provide advice and representation to clients of the Long-term Care Ombudsman Program, where otherwise eligible and appropriate under program priorities, and may accept direct referrals of such clients.

3. Providers must maintain confidentiality in accordance with the Canons of Ethics found at Rule 3:07 of the Rules of the Massachusetts Supreme Judicial Court, and the Older Americans Act and regulations, including, but not limited to, the sections on Legal Assistance and the Long-term Care Ombudsman Program.
4. Where both services are housed in the same agency, providers must develop and utilize policies and procedures to protect the integrity and confidentiality of both programs.

D. Other Coordination Requirements

1. Providers shall develop a coordination of services agreement with the local Legal Services Corporation (LSC) Program if the provider is not a LSC-funded program. The agreement shall detail the type of coordination and cooperation each program shall expect of the other while providing legal services for the elderly throughout the planning and service area. This agreement shall be updated periodically as needed;
2. Providers shall attempt to involve the private bar in legal assistance activities, including groups within the private bar furnishing services to older individuals on a pro bono or reduced fee basis and shall coordinate these attempts with efforts undertaken by the Area Agencies on Aging;
3. Providers shall supply clients with a mechanism for filing complaints or grievances about the operation of the program in coordination with the Area Agency on Aging;

E. Ethical Standards for Providers

1. Providers shall supply clients with a mechanism for filing complaints or grievances about the operation of the program;
2. Provider agencies shall develop and follow a protocol and a program policy for referral of fee generating cases and submit it to the Area Agency on Aging and the Legal Services Developer for approval through Appendix B of the Area Plan on Aging.

3. Provider agencies shall develop and submit for approval from the Area Agency on Aging and the State Legal Services Developer through the Area Plan on Aging a program policy on conflicts of interest. Such policy at a minimum, shall include provisions for identifying and resolving conflicts for employment and other activity outside the Title IIIB program, and shall extend to all persons employed part-time or providing services on a volunteer basis. The purpose of the policy shall be to protect clients from potential compromises of claims due to an inability to exercise independent professional judgment on behalf of a client as required by Rule 3:07 of the Rules of the Supreme Judicial Court.
4. All providers should establish goals for the future of the legal assistance program in consultation with Area Agency on Aging staff, and the Legal Assistance Developer.

VIII. AREA AGENCY ON AGING ROLES AND RESPONSIBILITIES

A. General Area Agency Requirements

Area agencies on Aging shall work with the Legal Assistance providers to provide leadership relative to all aging issues in their respective planning and service areas. This leadership shall extend to overall planning, advocacy, coordination of services, interagency linkages, information sharing, brokering, monitoring, evaluation and support to assure the integration of legal assistance services into the rest of the area's aging network and to assure that the focus of legal assistance services is consistent with agency identified regional goals.

B. Specific Area Agency Requirements

With respect to Legal Assistance, each Area Agency on Aging shall:

1. Seek to reach concurrence with the Legal Assistance Providers and other relevant local actors on the development of the planning and service area's AAA Elder Rights plan, which shall be part of the Area Plan;
2. Adhere to the standards set forth in this document and any amendments thereto;

3. Assure that programs are funded in accordance with federal and state requirements and that legal assistance services are available throughout the planning and service area;
4. Select the legal assistance provider(s) that is best able to demonstrate the experience and capacity to meet the requirements of federal and state law and regulations as well as the requirements of these Standards.
5. Assure that the primary focus of the Title IIIB Legal Assistance provider is the direct representation of clients in legal matters;
6. Work with the Legal Assistance Provider to develop a method for surveying client satisfaction and needs and to assure that the views of older persons are solicited and considered in the operation of the Legal Assistance Program;
7. Assist the State Office on Aging and the Legal Assistance Providers in developing and maintaining a program evaluation instrument;
8. Work with the providers in their development of local program plans for reaching target populations and addressing the priority needs set forth in Sections IV, V, and VI, which shall be reduced to writing.
9. At a minimum, monitor the program annually to assess compliance with state and federal laws and regulations and contractual requirements;
10. Assure that providers have a system in place to allow clients to file complaints or grievances about the operation of the Legal Assistance program;
11. Assure that competition for funds will be available only to programs which operate in accordance with the canons, disciplinary rules and ethical considerations adopted by the Bar of the

Commonwealth of Massachusetts.

12. Review and approve, throughout the area plan process, the provider program policy and protocol for referral of fee generating cases as required in Section IX. This shall be done in conjunction with and in consultation with the Legal Assistance Developer;
13. Review and approve, through the area plan process, the provider program policy on conflicts of interest as required in Section IX. This shall be done in conjunction with and in consultation with the Legal Assistance Developer;
14. Assist the State Legal Assistance Developer in designing a model Request for Proposals for adaptation to each area;
15. Assist the providers in establishing local goals for the future of the legal assistance program in consultation with the Legal Services Developer;
16. Submit program reports in a timely manner to the State Legal Assistance Developer using report forms developed by LAD.
17. Set no requirements for program income and assure that the provider has in place a policy and procedure for program income that complies with VII (B) (11) of these Standards; and
18. Assure that program income generated by the Legal Assistance Program is used to benefit the Legal Assistance program.

C. Coordination, Training and Support Responsibilities

1. AAA's shall, in conjunction with the legal providers, attempt to involve the private bar in legal assistance activities, including groups within the private bar furnishing services to older individuals on a pro bono or reduced fee basis. The Area Agencies' role in this coordination should be to provide the private bar with information about local aging programs and services and to increase the awareness within the local bar about the needs of older persons in their area.

2. AAA's shall support the legal assistance programs by obtaining input, through the Area Plan process, on the training and support needs of providers and legal assistance clients, and shall work with the EDEA to assure that providers are able to take advantage of relevant training opportunities offered.
3. AAA's shall assure that Providers can demonstrate that all relevant Title III legal staff have sufficient training and shall review and approve the provider's description of the method for keeping staff current with the priority issue areas. This review shall occur through the Area Plan process.

IX. STANDARDS FOR THE STATE UNIT ON AGING (E.O.E.A.)

A. General Requirements

1. The State shall develop an elder rights component as part of the State Plan, which shall include and delineate a program to provide leadership for expanding the quality and quantity of legal and advocacy assistance as a means for ensuring a comprehensive elder rights program and in accordance with the program purposes outlined in section II.
2. This function shall involve the coordination of providers in the State that assist vulnerable older individuals in the areas set out in Section VI.
3. The State shall establish a focal point for elder rights policy review, analysis, and advocacy at the State level which will include coordination of information submitted by Area Agencies under the Elder Rights plans.
4. The State will provide a Legal Assistance Developer and other personnel sufficient to ensure:
 - * State leadership in securing and maintaining legal rights of older individuals;
 - * capacity for coordination of the provision of legal assistance funded under Title IIIB; and

* technical assistance, training and supportive functions to Area Agencies on Aging, legal assistance to providers, ombudsmen and other appropriate persons;

5. The State shall provide for periodic assessments of the legal and advocacy needs of older individuals with respect to elder rights and shall identify unmet needs.
6. The State shall develop to the extent practicable working agreements with relevant state and federal agencies with respect to the legal needs of older individuals, including, but not limited to, the Legal Services Programs, the Social Security and Veterans Administrations, the court system and attorney general's office, in order to better coordinate legal services available to the elderly. The working agreement with Legal Services Programs shall address coordination through local program boundaries and varying priorities, State level relationship and program goals, and ways to assure service to vulnerable elders in priority categories while minimizing conflicts between LSC and OAA requirements for programs which are co-located.
7. The State shall work with the providers to assure that Title IIIB funds or other funds as contracted through the Area Agency on Aging are used to maintain or increase, to the extent practicable, the level of legal assistance furnished to eligible individuals, and to assure that Title IIIB funds are not used to supplant funds from other federal or non-federal sources.

B. State Support and Training Responsibilities

1. The State shall provide for education and training of professionals, volunteers, and older individuals concerning the topics of elder rights and the requirements and benefits of certain laws and programs assisting the elderly.
2. The State shall assure that training is available to providers each year in the areas of law to the Title IIIB Legal Assistance contract and the priority areas listed in Section VII.
3. The State shall work to develop low or no cost relevant training.

C. Other Responsibilities

1. The State shall compile and furnish to Area Agencies and providers a report reflecting the status of legal assistance in each in each area and throughout the state as a whole with respect to units of service provided in the contracted areas and individual program accomplishments of note.
2. The State shall work with Area Agencies on Aging to develop a model Request for Proposals (See Appendix F), a model Program Evaluation (See Appendix B), a model Provider Contract (See Appendix E), and model Reporting forms (See Appendix C) for use in each area.
3. The State shall supply each provider with technical assistance and guidance as may be necessary or requested by the Area Agency or Legal Assistance provider. However, the State shall respect the contractual relationship between providers and Area Agencies and shall not interfere with this relationship unless requested or unless federal and state laws and requirements, including those set forth in these standards, are implicated.
4. The State shall periodically review and update these Standards, with input from the Area Agencies and Legal Assistance providers, and shall provide training on the application of the Standards to Area Agencies and Providers.

APPENDICES

Appendix A	Standard 5.7, ABA "Standards for Providers of Civil Legal Services to the Poor"
Appendix B	Model Evaluation
Appendix C	Model Report of Activities
Appendix D-1	Model Memorandum of understanding: LAP & Ombudsman
D-2	MOU: LAP & Protective Services
D-3	MOU: LAP & SHINE
Appendix E	Model LAP/AAA contract

Standard 5.6

IF REPRESENTATION BEFORE A LEGISLATIVE BODY IS APPROPRIATE TO ACHIEVE CLIENT OBJECTIVES, A LEGAL SERVICES PROVIDER SHOULD STRIVE TO PROVIDE SUCH REPRESENTATION UNLESS PROHIBITED BY LAW OR INCONSISTENT WITH PROVIDER PRIORITIES.

Standard 5.7

WHEN CONSISTENT WITH ITS PRIORITIES, A LEGAL SERVICES PROVIDER MAY UNDERTAKE COMMUNITY LEGAL EDUCATION WHICH RESPONDS TO CLIENT NEEDS, ADVISES CLIENTS OF THEIR LEGAL RIGHTS AND RESPONSIBILITIES, AND ENHANCES THE CAPACITY OF CLIENTS TO ASSIST THEMSELVES COLLECTIVELY AND INDIVIDUALLY.

Standard 5.8

WHEN CONSISTENT WITH ITS PRIORITIES, A LEGAL SERVICES PROVIDER MAY PROVIDE LEGAL ASSISTANCE TO ELIGIBLE CLIENTS IN THEIR CREATION AND OPERATION OF ENTITIES DESIGNED TO ADDRESS THEIR NEEDS. SUCH REPRESENTATION SHOULD BE PROVIDED BY PRACTITIONERS WHO HAVE EXPERTISE IN PERTINENT SUBSTANTIVE LAW AND THE REQUISITE SKILLS TO ACHIEVE CLIENT OBJECTIVES.

TITLE III-B FY 9 FINAL MONITORING REPORT

AGENCY _____

PROJECT _____

GRANT PERIOD _____

DATE OF PROGRAM MONITORING VISIT _____

AGENCY STAFF _____
(Names and titles)

EVALUATION STAFF _____

(Names and titles) _____

DATE OF FISCAL MONITORING VISIT _____

AGENCY STAFF _____
(Names and titles)

EVALUATION STAFF _____
(Names and titles)

1. REVIEW OF DOCUMENTS

	YES	NO
Public relations/Outreach materials	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Documents to record unduplicated count of program participants	<input type="checkbox"/>	<input type="checkbox"/>
F Liability insurance policy	<input type="checkbox"/>	<input type="checkbox"/>
F Records of voluntary donations	<input type="checkbox"/>	<input type="checkbox"/>
F Records of in kind donations	<input type="checkbox"/>	<input type="checkbox"/>
Affirmative Action Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
F Project staff job descriptions	<input type="checkbox"/>	<input type="checkbox"/>
F Records of project staff hours of work	<input type="checkbox"/>	<input type="checkbox"/>

CLIENT OUTREACH/COMMUNITY CONTACT

	YES	NO
1. Subgrantee has developed and is implementing procedures for targeting services to elders with the greatest social and economic need.	<input type="checkbox"/>	<input type="checkbox"/>
2. Subgrantee has informed potential clients of the availability of services and has built support for the program.	<input type="checkbox"/>	<input type="checkbox"/>
3. Subgrantee has mentioned Elder Services as a funding source in all publicity.	<input type="checkbox"/>	<input type="checkbox"/>
4. Subgrantee has established and implemented a plan for coordination of services with other agencies.	<input type="checkbox"/>	<input type="checkbox"/>

PROGRAM OPERATIONS

- | | YES | NO |
|--|--------------------------|--------------------------|
| 5. Subgrantee has established procedures for determining age eligibility of program participants. | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Subgrantee has developed a system to count and record an unduplicated count of clients served, and units of service, by category. | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Subgrantee has established a method by which to inform clients of the grievance procedure policy. | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Subgrantee has maintained an adequate system for keeping, safeguarding and maintaining the confidentiality of client records. | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Subgrantee has developed a system to gather and process feedback from program participants. | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Subgrantee is on target to date for accomplishing proposed goals objectives and tasks as laid out in the project workplan. | <input type="checkbox"/> | <input type="checkbox"/> |

ADMINISTRATIVE/FISCAL OPERATIONS

- | | | |
|---|--------------------------|--------------------------|
| 11. Subgrantee procures and keeps current any necessary licenses, certifications, permits or accreditations required by local, state or federal regulation. | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Have fiscal and program reports been submitted to SCES by the stated deadline? | <input type="checkbox"/> | <input type="checkbox"/> |
| F 13. Subgrantee has up to date liability insurance policy? | <input type="checkbox"/> | <input type="checkbox"/> |
| F 14. Subgrantee expenditure of Title III-B funds is consistent with a) approved overall budget of the program, and b) the approved individual line items. | <input type="checkbox"/> | <input type="checkbox"/> |

- | | YES | NO |
|---|--------------------------|--------------------------|
| F 15 Subgrantee has maintained a separate accounting system for Title III-B funds. | <input type="checkbox"/> | <input type="checkbox"/> |
| F 16. Subgrantee performs an audit in compliance with the Single Audit Act if federal funds are in excess of \$25,000. | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. Subgrantee provides program participants with the voluntary opportunity to contribute to the cost of the Title III-B service. | <input type="checkbox"/> | <input type="checkbox"/> |
| F 18. Subgrantee maintains records of in-kind donations. | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. Subgrantee facility meets safety and health standards and is barrier free. | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. Subgrantee actively makes other fundraising efforts. | <input type="checkbox"/> | <input type="checkbox"/> |

PERSONNEL

- | | | |
|--|--------------------------|--------------------------|
| 21. Composition of project staff reflects compliance with agency's Affirmative Action Plan. | <input type="checkbox"/> | <input type="checkbox"/> |
| F 22. Project staff have available written job descriptions, records reflecting hours of work, vacation and sick time. | <input type="checkbox"/> | <input type="checkbox"/> |

23. Staff Update: Name and Position

See attached.

- | | | |
|---|--------------------------|--------------------------|
| 24. Subgrantee makes available training and supervision to project staff. | <input type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|

AGENCY: _____

PROJECT: _____

SUMMARY

REQUIRED CORRECTIVE ACTIONS

RECOMMENDATIONS

TITLE III-B PROGRAM REPORT FOR THE MONTH OF _____ FY _____

I. CLIENT CHARACTERISTICSA. RACE/ETHNICITY

	New	YTD
White		
Portuguese		
Black		
Haitian		
Cape Verdian		
Hispanic		
Asian		
Native		
TOTALS		

B. INCOMEC. AGED. GENDER

	New	YTD		New	YTD		New	YTD
Low			60-74			Female		
Other			75+			Male		
Unknown			TOTALS			TOTALS		
TOTALS								

E. SOCIAL CHARACTERISTICSF. SOURCE OF REFERRALS

	New	YTD		New	YTD
Physically Disabled			ES		
Homebound			CoA		
Linguistic Minority			CoA		
Institutionalized			Con. Council		
Mentally Disabled			Con. Council		
OTHER:			Other		
			TOTALS		

TITLE III-B PROGRAM REPORT FOR THE MONTH OF _____ FY

II. CASELOAD PROFILE

PREVIOUS CASELOAD	- CASES CLOSED (THIS MONTH)	+ CASES OPENED (THIS MONTH)	= TOTAL CURRENT CASELOAD	+ NEW CONTACTS	= TOTAL # SERVED THIS MONTH
	CASES CLOSED YTD				

III. SERVICES DELIVEREDA. DIRECT CLIENT SERVICES

	ADVICE & COUNSEL	BRIEF SERVICE	REFERRED OUT	CASE OPENED	YTD
Income Maintenance					
Housing					
Guardianship/ Conservatorship					
Other Individual Rights					
Medicaid/Medicare/ Other Health					
Nursing Home/ Ombuds					
Utility					
Consumer					
Employment					
Family					
Other					
TOTAL (THIS MONTH)					*****
TOTAL - YTD					

TITLE III-B PROGRAM REPORT FOR THE MONTH OF _____ FY _____

B. REFERRALS FROM SCLP

	New	YTD
CoA		
CoA		
Cons. Council		
Cons. Council		
PRIVATE BAR		
OTHER		
TOTALS		

C. COMMUNITY EDUCATION/OUTREACH

News Articles:
Brochure Distribution
Speaking Engagements:
Other:

TITLE III-B PROGRAM REPORT FOR THE MONTH OF _____ FY _____

IV. PROGRAM NARRATIVE

Please describe legal issues and/or cases worked on that are of particular importance:

Completed by:
Title:
Rcvd by:

**MODEL
MEMORANDUM OF UNDERSTANDING**

This memorandum of understanding embodies agreement between the _____, the Legal Assistance Provider (LAP) which has contracted to provide legal services pursuant to a Title IIIB, Older Americans Act, contract with the Area Agency on Aging, _____, (AAA) and the Long Term Care Ombudsman Program (OP) operating within the aforesaid AAA service area.

WHEREAS the activities of the parties are funded under the Older Americans Act through the Executive Office of Elder Affairs, and

WHEREAS the parties have the mutual obligation to serve vulnerable elders in their service area, and

WHEREAS the parties desire to coordinate their activities to maximize their effectiveness in meeting their mutual and individual goals and objectives,

THEREFORE, the parties agree:

(1) A referral protocol is hereby established. The referral procedure shall be capable of responding to a resident who wishes to be referred to the LAP without being required to disclose the nature of the legal problem on which he or she requests a consultation. In a case where a resident is unable to sign a referral or where there is some question as to his or her ability to understand the import of the referral form, the OP may forward such form to the LAP, with an appropriate explanation; the LAP will evaluate the resident's ability to establish an attorney-client relationship. If that evaluation results in a determination that the resident cannot establish an attorney-client relationship, the OP will determine the appropriateness of serving as the resident's representative in some "Next Friend" capacity. In such circumstances, the LAP may serve as counsel for the OP.

(2) The parties shall meet no less than annually to review and exchange information regarding their current service priorities;

(3) Each party will give mutual support to the other in consonance with its individual, professional and programmatic responsibilities;

(4) The LAP shall furnish to the OP a statement updating any changes in its program priorities, which are currently:

(5) The LAP and the Op shall be reasonably available to each other to provide technical assistance or other support consistent with its duties;

(6) The OP shall update the LAP with a statement of any changes in its policies with respect to its procedures for handling and resolving matters appropriate to its functions under relevant Ombudsman laws and regulations, the Nursing Home Reform Law (OBRA of 1987), 940 C.M.R. 4.00 (long term care consumer protection regulations) and other laws. The current policies are:

(7) The parties agree to the following procedures for dealing with clients with Medicaid, Medicare or other public benefit or insurance applications or appeals, and other issues e.g. financial exploitation, competency, personal rights. It is generally agreed that LAP personnel should be utilized in cases which require representation in administrative or judicial proceedings, and S.H.I.N.E. personnel should be utilized for clients who need only advice, counseling or assistance with applications or claims and who lack the resources to pay for counsel who have expertise in Medicaid applications and Medicaid planning.

(8) The OP shall give notice to the LAP in any instance in which the State Long Term Care Ombudsman Director informs the OP of the planned closing of a facility.

Signed:

MODEL
MEMORANDUM OF UNDERSTANDING

This memorandum of understanding embodies understanding between

_____, the Legal Assistance Provider

(LAP) and the Protective Services Program(PS) of _____

_____, which is part of the _____

AAA service area.

WHEREAS the parties have a mutual obligation to serve vulnerable elders in their service area, and

WHEREAS the parties desire to coordinate their activities to maximize their effectiveness in meeting their mutual goals and objectives,

THEREFORE, the parties agree:

- 1) The parties shall meet no less than annually to review and exchange information regarding their current service priorities.
- 2) Each party will give mutual support to the other in consonance with its individual, professional and programmatic responsibilities.
- 3) PS will make a referral to LAP on behalf of an elder only with the permission of said elder. If the elder is unable to give consent, the PS caseworker may consult with the LAP, without giving the name of the client, in order to explore other legal options available to the elder.

In a case where there is a question about the elder's ability to understand the referral, the PS caseworker may make the referral; the LAP will evaluate the elder's ability to form an attorney-client relationship.

2 MOU- PS/LAP

- 4) When PS is the petitioner in a Guardianship proceeding, a referral shall be made to LAP in order to ensure representation of the proposed ward.
- 5) The LAP will make referrals to PS and the Elder At Risk(EAR) program with the consent of the elder. If the elder does not consent to such a referral, LAP may consult with PS/EAR without giving the name of the client in order to explore other possible service options available to the elder.
- 6) The LAP shall periodically update PS on any policy changes with respect to case priorities or procedures.
- 6) PS shall update LAP on any policy changes with respect to criteria for intake and procedures for investigation and service provision.

SIGNED:

Protective Services Representative

Legal Assistance Provider

Date

MODEL MOU

BETWEEN THE LEGAL ASSISTANCE PROVIDER (LAP) AND THE
SHINE PROGRAM (SP)

Whereas the parties have the mutual obligation to serve vulnerable elders in their service area, and

Whereas the parties desire to coordinate their activities to maximize their effectiveness in meeting mutual and individual goals and objectives,

The type of work performed by SHINE counselors concerning public benefits with health care components, including SSI, MEDICAID (MA), QMB, SLMB, AND LTC-MA are:

- information about eligibility criteria and how to start the application process.
- assistance with understanding the application completion process and assistance with actual form completion if and only if no family member, friend or paid advisor is available for such assistance.
- assistance with the Medicaid spend-down process by explaining process and training Medicaid recipient on how to complete the spend-down form.
- giving notice of right to appeal public benefits decisions and refer to LAP for representation.
- giving notice of spousal anti-impoverishment protections to community spouses of LTC Medicaid applicants and referring to LAP for further information or to an elder law attorney knowledgeable in Medicaid rules to handle appeals or provide Medicaid estate planning counseling.

The LAP has identified as case-type priorities health care issues related to the following topics:

- Medicaid and Medicaid discrimination
- Medicare
- Nursing home resident rights and quality of care concerns
- home health issues

- Qualified Medicare Beneficiaries
- Specified Low-income Medicare Beneficiaries
- COBRA (continuation of group health insurance)
- health care proxies
- other health insurance issues

The parties agree:

1. Each shall meet at least twice annually in a local SHINE Counselors Monthly Update Meeting to review and exchange information regarding their current service priorities. During said meetings, the LAP is responsible for providing basic training and reviews of recent changes in the eligibility criteria, application processes (including verification documentation), benefit levels of coverage, and appeals processes under Community Medicaid, SSI, QMB, SLMB, Medicare and LTC Medicaid. During said meetings, SHINE shall be responsible for sharing its information about trends developing in the Medigap and Managed Care health insurance fields. Technical updates shall be provided both orally and in writing.

The dates in the upcoming twelve months shall be _____ and _____.

2. If a local SHINE Program develops a second tier of SHINE Public Benefits Counselors, comprised of volunteers who are trained to a higher degree on how to navigate the public benefits administrative systems, the LAP shall participate in the training of such Counselors and shall provide direct access to technical assistance by telephone to this corps of SHINE - Public Benefits Counselors.

3. The LAP shall be accessible by telephone to answer technical assistance inquiries of the SHINE Coordinator as needed in the completion of SHINE counseling work.

4. The SHINE Program Counselors shall receive an orientation on the LAP service priorities and shall learn when and how to refer clients who are in need of legal services named in the service priority list. Said orientation and referrals would also include certain health benefits-related cases which

are too complex for a non-lawyer to pursue. (e.g. equitable remedies for late enrollment into Part B; LTC Medicaid appeals of asset division; SSI appeals, etc.)

5. The LAP shall identify and refer individuals who are in need of SHINE services to the local SHINE Coordinator.

6. The LAP may serve as a member agency host site for a SHINE Counselor(s).

7. The LAP shall collaborate with SHINE Staff on development of training materials and complaint procedures that may be used by the local programs in training of or counseling by SHINE Counselors.

8. The LAP shall issue to the regional SHINE Coordinator written notices of immediate changes which are about to occur in the eligibility criteria, application processes, benefit levels of coverage, and appeals processes under Community Medicaid, SSI, QMB, SLMB, Medicare and Long Term Care Medicaid.

9. The LAP and SHINE shall work jointly to produce _____ (#) outreach sessions at which both LAP and SHINE staff appear to present information and answer questions from the attendees.

Signatory for SHINE

Signatory for LAP

Date

DRAFT

Model Title IIIB Legal Assistance Agreement

This Contract is entered into by and between _____
_____ (the "Corporation"), a Massachusetts
corporation having its principal offices at _____
_____ and _____ (the
"Provider"), a Massachusetts corporation having its principal
offices at _____.

WHEREAS, the Corporation desires to purchase Legal Assistance
for individuals 60 years of age or older who reside in its service
area, giving priority to those elderly individuals with the
Greatest Economic and Social Needs as defined in Attachment A
below; and

WHEREAS, the Corporation has authorization from the Executive
Office Of Elder Affairs (EOEA) to fund such services as an Area
Agency on Aging under Title III of the Older Americans Act of 1965,
as amended (42 U.S.C. 3021 et seq.); and

WHEREAS, the Provider is engaged in the furnishing of legal
assistance in the Planning And Service Area covered by the
Corporation;

NOW, THEREFORE, in the Corporation and the Provider do
mutually agree as follows:

1. Engagement: The Corporation hereby engages the Provider to
provide and the Provider agrees to provide "Program Services" as
set forth in Attachment A of this Agreement and the statement of

DRAFT

program goals and objectives without professional fees or charges to individuals sixty years of age or older, giving priority to those elder individuals with the greatest economic and social need who reside in the following designated service area _____

2. Period of Performance

This Agreement shall begin on _____ and shall remain in effect through _____, unless earlier terminated in accordance with the terms set forth herein. Programmatic and fiscal activity on this grant must be demonstrated within thirty (30) days of the issuance of the grant award.

3. Compensation

The Corporation shall pay the Provider in accordance with the terms set forth in Attachment B of this Agreement. The Corporation shall not pay and the Provider shall not claim compensation for services until such time as the Executive Office Of Elder Affairs has approved and its authorized representative has signed the Area Plan on Aging for the Fiscal Year(s) covering the period of this Contract.

4. Maintenance Of Records

The Provider shall prepare and maintain the following records:

DRAFT

(a) Financial books and records that reflect costs incurred and allocated to performance of the services covered by this Agreement including documentation of all voluntary contributions from clients or others toward the Title III-B funded program. These books and records shall be maintained in accordance with generally accepted accounting principles.

(b) Program records and documentation (including Affirmative Action Plans) pertaining to activities covered by the Contract.

(c) A statement of goals and objectives which specifies the types and amount of services to be provided in the Contract period, including the number of unduplicated clients to be served.

(d) Client Satisfaction forms received from clients and any other self-evaluation tools maintained by the Provider.

5. Monitoring

The Provider shall establish and maintain such documents and financial program records which are reasonably required by the Corporation to insure documentation, monitoring and evaluation of financial activities and the provision of purchased services. In addition, the Provider shall prepare and submit with the invoices required by Attachment B of this Contract, a monthly report which shall include such programmatic, fiscal and administrative data as the Corporation deems necessary for the monitoring and evaluation of such services and to substantiate the Corporation's claim for reimbursement from EOEA. Such reports shall be submitted on a

DRAFT

format provided in Attachment C of this Contract or as requested by the Corporation and shall be submitted to the Corporation within fifteen (15) days after the end of each calendar month during the term of this Contract. All financial records, program records (other than those subject to the attorney client privilege or other ethical considerations mandated by law), and other books, records, documents and property pertaining to this Contract shall at all times be open for inspection, review or audit by the Administration on Aging, EOE, the Corporation, or their authorized representatives, who shall at all reasonable times have access to the premises wherein such books, records, documents and property are located.

The Corporation reserves the right to make a site visit at any time during the regular business hours of the Program for the purpose of conducting program and fiscal audits. The Corporation shall conduct at least an annual site visit for such purpose. The Provider shall develop and keep on file client satisfaction surveys (with personal identifiers removed when monitored) as well as other measures the Provider uses to measure its impact on clients and improve Program operations.

The Provider shall provide the Corporation any additional data that the Corporation may reasonably require to permit it to monitor performance of this Contract at a level sufficient to assure appropriate fiscal administration, accountability and program quality.

DRAFT

Following completion of performance under this Contract, the Provider shall retain for a period of five (5) years, or such longer period as any applicable licensing standards may require, all fiscal and program documentation pertaining to the Provider services.

6. Confidentiality

The Provider shall not use or release any reports, data or other information identifying applicants or persons served, or which could reasonably lead to the identification of such applicant or person served, in accordance with the laws of the Commonwealth, M.G.L. c. 66A §2, the Privacy and Confidentiality Regulations and where applicable, Federal law. Such information shall be used only to assure proper administration, planning, coordination and monitoring of performance under this Contract and to permit the transfer of records of a person served to another agency for the purpose of continuing services. The Provider shall provide the Corporation such additional data as the Corporation may require to monitor the Provider's information system and to guarantee adequate safeguarding of the human and civil rights of the applicants and persons served.

7. Protection Of Clients

The Provider shall comply with the applicable provisions of the Executive Office Of Elder Affairs' Regulations Governing The

DRAFT

Protection Of Clients Who Are Participants In Research Projects
(651 CMR 7.00). These regulations require that research, experimentation, surveys, market testing or similar research and experimentation which involves clients of Title III, IV, IV-A, VII, and IX of the Older Americans Act and Title XX of the Social Security Act must be approved by the Executive Office Of Elder Affairs Rights Review Committee.

8. Publicity

In order to inform potential clients of the availability of services and to build support for the project, the Provider will publicize information regarding the services through mailings, radio, television and newspapers. The Corporation and EOEA will be mentioned by name as a funding source in all publicity efforts, including but not limited to: brochures, posters and media releases. The Provider shall make available copies of all public relations material to the Corporation upon request.

9. Non-Discrimination In Service Delivery

The Provider shall not deny any services to or otherwise discriminate in the delivery of services against any person who otherwise meets the eligibility criteria for the project on the basis of race, color, religion, sex, age, national origin, ancestry, physical or mental disability, sexual orientation or because such person is a recipient of federal, state or local

DRAFT

public assistance or housing subsidies. The Provider shall comply with all applicable provisions of:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.) - prohibits discrimination on the basis of color or national origin in programs receiving federal financial assistance.

(b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and the regulations promulgated thereunder (45 CFR Part 84) - prohibits discrimination against qualified disabled individuals on the basis of the disability in any program or activity receiving or benefitting from federal financial assistance and requires programs and activities, when viewed in their entirety, to be readily accessible to disabled persons; and

(c) M.G.L. c. 151B §4 (10) - prohibits discrimination in furnishing services on grounds that an individual is a recipient of federal, state or local public assistance or housing subsidies;

(d) The Executive Office Of Elder Affairs' Regulation 651 CMR 8.00: Discrimination Based On Age In Agencies And Organizations In Receipt Of Funds From The Department Of Elder Affairs.

10. Non-Discrimination In Employment

The Provider shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, or physical or mental disability. The Provider shall comply with all applicable provisions of:

DRAFT

(a) Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.) - prohibits discrimination in employment because of race, color, sex, religion or national origin;

(b) M.G.L. c. 151B §4, subsections 1,1A and 1B - prohibits discrimination in employment on the basis of race, color, religious creed, national origin, sex, sexual orientation, ancestry or age

(c) The Department Of Elder Affairs' Regulations 651 CMR 8.00: Discrimination Based On Age In Agencies And Organizations In Receipt Of Funds From The Department Of Elder Affairs.;

(d) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and the regulations promulgated thereunder (45 CFR Part 84) - prohibits discrimination against qualified disabled individuals on the basis of the disability and requires employers to make reasonable accommodations to known physical or mental limitations of otherwise qualified disabled applicants and employees.

11. Affirmative Action

The Provider shall develop and adhere to a policy of affirmative action in all aspects of employment under this Contract. If the total level of Federal funding received by the Provider from all sources, including OAA Title III, is ten thousand dollars (\$10,000) or greater, the Provider shall comply with Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in the

DRAFT

Department of Labor Regulations (41 CFR, Part 60). In addition, if the maximum compensation paid to the Provider in the fiscal year immediately prior to the beginning of this contract, or payable during the term of this Contract, from agencies acting pursuant to contracts with the Executive Office Of Elder Affairs, is fifty thousand dollars (\$50,000) or more, the Provider shall develop and maintain an affirmative action plan in accordance with the applicable requirements of Executive Order 227 and transmit a copy to the Corporation.

12. Conflict Of Interest

The Provider shall not knowingly employ, compensate or arrange to compensate any employee of the Corporation during the term of the Contract without the approval of the Corporation.

13. Political Activity

No employee of the Provider may engage in partisan or non-partisan political activity during the hours for which the employee is paid in whole or in part with Corporation funds.

The Provider may not select or promote an employee based on his or her political affiliation.

The Provider agrees that for the term of this Contract no employee paid in whole or in part or board member of the Provider shall at any time use the name of the Corporation and funds received pursuant to this Contract, either directly or indirectly

DRAFT

for the purpose of interfering with or affecting the results of an election or nomination for office, whether partisan or non-partisan.

14. Termination

(a) If, for any reason, the Provider is unable to provide the services specified by this Contract, it shall promptly notify the Corporation of its inability to provide services and indicate the specific reasons.

(b) The Corporation may terminate this Contract if the Provider has failed to comply with the provisions of this Contract in whole or part. However, prior to terminating this Contract pursuant to this subsection, the Corporation shall notify the Provider, in writing, of the specific areas of non-compliance. The Provider shall restore compliance within thirty (30) days of the date of notice. If the Provider has not restored compliance within the thirty (30) day period, the Corporation may terminate this Contract by furnishing the Provider with written notice at least thirty (30) days prior to the effective date of termination.

(c) If the Corporation determines that any non-compliance with the terms of this Contract on the part of the Provider endangers the life, health, and safety of any recipients of services under this Contract, it shall terminate this Contract by orally notifying the Provider of termination followed by the making of written notification, return receipt requested, setting forth the specific

DRAFT

reasons for termination, within three (3) business days following the oral notification. Termination pursuant to this subsection shall take effect upon the furnishing of the oral notification.

(d) The Provider may terminate this Contract prior to its expiration date if the Corporation fails to comply with a material provision of this Contract. The Provider shall furnish the Corporation with written notice of termination at least thirty (30) days prior to the effective date of termination.

15. Early Termination: Change In Law

In the event that any statute or regulation which governs performance hereunder is changed, differently interpreted by a court or other competent authority, or newly enacted, adopted or promulgated, so as to increase the burden on either party in complying with the terms of this Contract significantly beyond those existing at the time of the execution of this Contract, the party so burdened may terminate this Contract upon written notice to the other party of at least thirty (30) calendar days.

16. Early Termination: Elimination Or Reduction In Funding

In the event that Title III funding appropriated through EOEAA for Title III service contracts to the Corporation is eliminated or reduced to an extent that funding of this contract is not feasible, the Corporation may terminate this Contract by providing written

DRAFT

notice of termination to the Provider effective not less than thirty (30) days after date of such notice.

17. Early Termination: De-designation of the Corporation

The Corporation shall notify the Provider in writing of its receipt of notification by the Executive Office of Elder Affairs (hereinafter in this subsection "the Department") that the Department intends to de-designate the Corporation as the Area Agency on Aging for the service area covered by this agreement; thereafter, the Corporation shall notify the Provider of any appeal it may take of the Department's action and the disposition of any such appeal. All notices required by this subsection shall be made in writing within ten (10) days of the event which prompts the notice requirement.

In the event that the Executive Office of Elder Affairs finally de-designates the Corporation as the Area Agency on Aging for the service area covered by this agreement, the Corporation may terminate this Contract by furnishing the Provider with written notice at least sixty (60) days prior to the effective date of termination. The parties shall cooperate fully with each other and with the Department, and take all reasonable steps and utilize all reasonable means to ensure continuity of services to program clients, including the use of available Corporation funds for the continuing delivery of legal assistance under this Contract.

DRAFT

18. Obligations upon termination

Upon termination, the Corporation shall be entitled to possession of all finished or unfinished documents, data, studies, and reports not subject to the attorney client privilege or other ethical considerations mandated by law, prepared by the Provider pursuant to this Contract. The Provider agrees to cooperate with any successor legal assistance contractor to assure a smooth transition and protect the rights of elders being served under the program.

Upon termination, the Provider shall be entitled to compensation for services rendered in the satisfactory performance of this Contract; provided that the Provider shall submit properly completed fiscal reports to the Corporation covering services rendered not later than thirty (30) days after the date of termination.

19. Reproduction of Reports; Copyright

The Provider shall not disseminate, reproduce or publish any report, information, data, or other documents produced in whole or in part pursuant to the terms of this Contract without prior written consent of the Corporation, nor shall any such report, information, data or other document be the subject of an application for copyright by or on behalf of the Provider without the prior written consent of the Corporation.

DRAFT

20. Assignment and Subcontract

The Provider shall not assign or subcontract any interest in this Contract without the express written permission of the Corporation and EOE; provided that claims for money due or to become due to the Provider from the Corporation under this Contract may be assigned to a bank, trust company or other financial institution without such consent and that notice of any such assignment is furnished promptly to the Corporation. None of the services to be provided by the Provider pursuant to this Contract shall be subcontracted to any other organization, association, individual, partnership or group of individuals without the express written permission of the Corporation and EOE.

21. Insurance

The Provider shall procure and maintain insurance. The insurance will protect itself, its subcontractors, and the Corporation adequately from fire and extended coverage losses and from claims for bodily injury, death or property damaged which may arise from operations under this Contract.

The Provider will provide the Corporation with a Certificate of Insurance prior to the commencement of the Program work which will provide that the policy shall not be canceled by the insurance company without ten (10) days notice to the Corporation of intention to cancel.

DRAFT

The Provider will maintain such insurance amounts of not less than:

(a) Workers Compensation Insurance shall be secured and maintained as required by the Commonwealth of Massachusetts;

(b) Public Liability - Bodily Injury and Property Damage:

(1) Injury or death of one person \$ 500,000

(2) Injury to more than one in single accident \$1,000,000

(3) Property Damage \$ 100,000

(c) Malpractice-Professional Liability Coverage (as applicable)

(1) Each occurrence \$ 500,000

(2) Aggregate \$1,000,000

Provider shall also purchase and maintain fidelity bonds of no less than twenty-five thousand dollars (\$25,000) per incident for all employees with direct access to or responsibility for the receipt and disbursement of funds.

22. Waiver of Default

Waiver by either party of any non-compliance shall not constitute a waiver of any subsequent non-compliance.

23. Amendment

This Contract may be amended only by written document signed by persons authorized to bind in contract the Corporation and the Provider. All amendments must be attached to this Contract.

DRAFT

24. Notice

Unless otherwise specified herein, any notice, approval, request or demand hereunder from either party to the other shall be in writing and shall be deemed to have been given when either delivered personally or deposited in a United States mail box in a postage prepared envelope addressed to the other.

25. Licenses

The Provider shall procure and keep current any license, certification, permit or accreditation required by local, state or federal statute or regulations and shall, upon request of the Corporation submit to the Corporation proof of any such license, certification, permit or accreditation.

26. Integration

All attachments to this Contract are deemed to be part of this Contract. The entire agreement of the parties is contained herein, and this Contract supersedes all oral agreements and negotiations between the parties relating to the subject matter contained herein.

27. Compliance With Legal Services Corporation Restrictions As Set Forth In Public Law 104-134

Title III legal assistance providers who receive funding from the Legal Services Corporation shall comply with the restrictions on activities set forth in P.L. 104-134 as explained in AOA -IM-96-08 dated August 22, 1996.

DRAFT

IN WITNESS WHEREOF, the parties have caused this contract
to be executed by their duly authorized officers.

BY: _____
For the Corporation

Date: _____

BY: _____
For the Provider

Title: _____

Date: _____

DRAFT

ATTACHMENT A
SCOPE OF SERVICES

I. Definition of Service:

Legal Assistance means legal advice and representation provided by an attorney (including, to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney and counseling or representation by a non-lawyer where permitted by law). Services provided may include advice and consultation, drafting legal documents, negotiation, community education, outreach, and the representation of clients or groups of clients before legislative, administrative, and judicial tribunals, to the extent permitted by the Older Americans Act. Legal assistance activities shall be rendered in a manner consistent with the Code of Professional Responsibility as promulgated by the Massachusetts Supreme Judicial Court and with the Standards for Providers of Civil Legal Services to the Poor as promulgated by the Standing Committee on Legal Aid and Indigent Defense of the American Bar Association.

II. Program Services To Be Provided

a. The Provider hereby agrees to provide legal assistance to at least _____ unduplicated clients aged sixty years of age and older who reside in the service area during the contract. Of these, at least _____ will be minority elders.

b. The Provider agrees to provide a total of _____ Community Legal Education programs (CLEs) for elders and elder service providers.

c. An unduplicated client shall mean a case - a distinct legal problem or set of closely related legal problems of a single client, and the legal activities or processes used in resolving these problems. A client with two or more closely related legal problems will be considered as presenting a single case if all the problems can be resolved through a single legal process or forum. It is understood that a client may generate one or more cases that require separate resolution.

d. It is acknowledged that some cases require an exceptional expenditure of time and effort because of the complexity of the issues involved or because of especially complicated procedural requirements. The Provider may conduct class action litigation where there is evidence of a pattern of abuse or unlawful conduct which affects many elderly persons which could be alleviated more efficiently in this way than by litigating on a case by case basis. A class action may constitute as many cases as there are persons in the class. The Provider may conduct other "impact" advocacy

DRAFT

activities when permitted by law and when such advocacy would improve the legal rights of, or benefits accorded by law to, a significant number of elders in an efficient and cost-effective manner.

III. Case Type Priorities

a. The Provider agrees to concentrate its individual case delivery efforts on the following types of cases mutually determined by the Corporation and Provider as priorities for the service area. These priorities are subject to modification by mutual agreement of the Corporation and the Provider:

Income Maintenance, which may include: Social Security (Title II), SSI (Title XVI), Food Stamps, Veterans Benefits, Unemployment Compensation, Pensions, Railroad Retirement and Durable Power of Attorney;

Health and Long Term Care, which may include: Medicaid/Medicaid Discrimination, Medicare, Nursing Home/home health issues (quality of care, residents' rights), Qualified Medicare Beneficiaries (QMB) and Specified Low Income Medicare Beneficiaries (SLIMBI) issues, COBRA (e.g. health insurance) issues, health care proxies, health insurance issues;

Housing, which may include: Landlord/Tenant, Home Mortgage Foreclosures, Home Repair Fraud, Utility Shut-off/Energy Issues, Threats to Home Ownership, Home Equity Conversion;

Abuse, Neglect and Exploitation, which may include: Elder Abuse, Financial Exploitation, Representative Payee;

Representation of Ward in Guardianship, which may include: Defense or removal of Guardianship, Other Guardianship/autonomy issues, Brophy issues (those involving a patient in a persistent vegetative state, whose life support systems and their continuation or removal are the central issues in a guardianship or other proceeding);

Nutrition, which may include: Access to services and Food Stamps;

Age Discrimination, which may include: Housing, Employment, Credit, Services.

b. The Provider should consider a prospective client's individual circumstances, the merits of each claim, and the likelihood of success, and may handle cases outside the scope of the foregoing list where appropriate in keeping with the program's purpose.

DRAFT

IV. Population to be Served/Targeted Population

- a. Any person sixty (60) years or older residing in the service area and in need of the service.
- b. As per Older Americans Act, as amended, section 306 (a) (5) (A), the Provider shall, to the maximum extent feasible, provide services to low-income minority elders and to those elders with the greatest social need, with special attention to low-income minority individuals. Greatest social need is defined as non-economic factors restricting an individual's ability to perform normal daily tasks or threatening the capacity to live independently. These factors may include physical and mental disabilities, language barriers, and cultural or social isolation including that caused by racial or ethnic status (for example, African American, Hispanic, Native American). Greatest economic need is defined as the need resulting from an income level below the poverty threshold established by the Bureau of the Census.
- c. The Provider does hereby agree to strive to provide services to low income minority elders in at least the same proportion as the population of minority elders bears to the population of older individuals in the area served by the Provider. The Provider shall define, subject to Corporation approval, the methodology through which the service needs of low income minority elders will be addressed.

DRAFT

ATTACHMENT B
FISCAL AND ADMINISTRATIVE CONDITIONS

I. Maximum Obligation

The Corporation shall pay to the Provider an obligation of \$_____ Title III funds, which shall be the Corporation's maximum obligation under this contract. The Provider shall provide a matching share of \$_____ (not less than fifteen per cent (15%) of the total Program budget) in non-Title III cash or in-kind services. The approved budget shall be set forth in the Notification of Grant Award which is incorporated herein as Attachment C to this Contract.

II. Approved Budget

In no case shall the Provider's Program Services expenditures exceed the total approved budget or exceed the approved costs for each budget category as specified in this Contract by greater than 10% without the prior written approval of the Corporation. The portion of the total budget allocated to the individual line items as set forth in the budget may be amended by mutual consent of the parties at the request of either party, but in no event shall the sum of the reimbursable amounts as amended exceed the level of funding itemized in the original budget. Failure of the Provider to request approval for budget changes from the Corporation may be a cause for disallowance of expended monies, which determination is the sole decision of the Corporation.

III. Method Of Payment

The Provider shall submit a monthly fiscal and program report to the Corporation within fifteen (15) days following the end of each calendar month on a form approved by the Corporation as set forth in Attachment C to this Contract. Such reports shall be for Program Services authorized by the Corporation pursuant to this Contract and rendered to eligible clients by the Provider during the previous month. Upon receipt and approval of properly completed fiscal and program reports, the Corporation shall bill EOEAs and make payment to the Provider promptly after receipt of payment from EOEAs. The Corporation shall make its best efforts to process payment to the Provider within forty five (45) days after the end of the month billed for. The Corporation may, within ninety (90) days of the expiration of this Contract and after consultation with the Provider, adjust any invoice of the Provider both before and after payments have been made; however, the failure of the Corporation to exercise this provision shall not constitute

DRAFT

a waiver of any right of the Corporation to otherwise recover funds paid to the Provider pursuant to this Contract.

IV. Accounts

Both federal Program grant funds and non-Program resources (cash or in-kind) which constitute the matching share for the Program shall be accounted for separately from any other funds. Provider Program accounting records shall be itemized in sufficient detail to show the exact nature of all receipts and disbursements. The Provider shall establish and maintain appropriate procedures to safeguard and account for all contributions and project income. All financial and accounting records shall be maintained by the Provider in accordance with generally accepted accounting practice and principles.

V. Contributions

The Provider shall encourage confidential and voluntary contributions from recipients of the Provider's services. To this end, the Provider shall, at the closure of a case or brief service make available to recipients of services and/or their families a form, letter or notice (oral notice in the case of brief service) informing them of the opportunity to make voluntary and confidential contributions. Contributions received shall be accounted for by the Provider and used to expand legal assistance service delivery.

VI. Independent Audit

If the total level of Federal funding received by the Provider from all sources, including OAA Title III, is twenty-five thousand dollars (\$25,000) or greater, the Provider agrees to submit to the Corporation the results of an independent audit in conformance with OMB Circular A-133 no later than thirteen (13) months after the close of the Provider's fiscal year.